



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 24, 1994

Mr. Stephen L. Braun  
Bracewell & Patterson, L.L.P.  
South Tower Pennzoil Place  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2781

OR94-673

Dear Mr. Braun:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29180.

The Katy Independent School District ("the school district") received a request for "the complete job application from Elisa Jackson." The school district asks whether it must withhold portions of the requested job application based on sections 552.101 and 552.102 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law, including information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

You first express concern for the privacy of the applicant. The information at issue includes an application, a resume, transcripts, a copy of a teacher's certificate, a Texas teacher appraisal system appraisal record, a statement by the applicant regarding her purpose for being an educator and her goals in education, a general information form, three complete teacher reference reports, and three uncompleted teacher reference reports.

The public has a legitimate interest in information about an applicant's past employment record and her suitability for the employment position. *See* Open Records Decision No. 455 (1987) at 9. Such information is not protected from required public disclosure by the common-law right to privacy. We, therefore, conclude that the school district may not withhold the requested information based on section 552.101 in conjunction with the common-law right to privacy.

You are also concerned for the privacy rights of the individuals who completed the teacher reference reports. The reports require the applicant's references to rate the applicant in regard to certain qualities. We do not believe that the fact that a person has rated an applicant discloses highly intimate or embarrassing facts about that person. *See* Open Records Decision No. 212 (1978) at 4.

You also raise section 552.102 of the Government Code, which reads as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

(b) Information is excepted from the requirements of Section 552.021 if it is a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

This exception applies to information in the personnel files of public employees. Apparently, the applicant was not employed by the school district. Thus, the requested information is not in a personnel file. Accordingly, section 552.102 does not apply to the requested information. *See* Open Records Decision No. 455 at 8.

The applicant's social security number appears on several of the documents. Social security numbers may be withheld under section 552.101 of the Government Code under certain circumstances. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after

October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers on the documents are confidential under section 405(c)(2)(C)(vii), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by school district pursuant to any provision of law, enacted on or after October 1, 1990.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/JT/rho

Ref.: ID# 29180

Enclosures: Submitted documents

cc: Ms. Laura Bellegie  
Ewbank & Harris, P.C.  
P. O. Box 2430  
Austin, Texas 78768-2430  
(w/o enclosures)